



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 04-79

SUBJECT: RICHARD PERKINS
STATE ASSEMBLYMAN

A. JURISDICTION:

Mr. Perkins is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 04-79 (Tab B)
- Reviewed subject's response dated November 11, 2004 (Tab C)
- Reviewed information provided by Lorne Malkiewich, Director of the Legislative Counsel Bureau

C. RECOMMENDATIONS:

The Executive Director hereby recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hear and render an opinion in this matter relating to the provisions of:

- NRS 281.481(6).

SPECIFIC REASON:

No allegation or credible evidence of any fact that amounts to or supports a violation by any public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion alleges Assemblyman Perkins violated NRS 281.481(6) by suppressing the results of a sexual harassment investigation regarding the conduct of Assemblyman Mark Manendo. The complaint alleges the public release of the report could unfavorably affect Mr. Perkins' pecuniary interests by changing the balance of power in the Nevada State Assembly and preventing him from being re-elected Speaker of the Assembly. Further, the complaint states the release of said report could affect the re-election of Assemblyman Perkins. (The complaint was filed November 1, 2004.)

E. SUMMARY OF SUBJECT'S RESPONSE:

In his response, Assemblyman Perkins contends that the report in question was a confidential communication from staff of the Legislative Counsel Bureau, and thus could not be considered a public document. He further provides that the \$7,800 biennial salary he receives is solely for serving in the Assembly and does not constitute a pecuniary interest as contemplated by statute. He also states the ethics complaint was filed the day before the general election and constitutes a 'desperate attempt to influence the results of an election, not a legitimate inquiry regarding unethical conduct.'

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481

General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:.....

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

NRS 218.625

Officers and employees not to oppose or urge legislation; disclosure of information.

1. *The Director, other officers and employees of the Legislative Counsel Bureau shall not:*

(a) Oppose or urge legislation, except as the duties of the Director, the Legislative Auditor, the Legislative Counsel, the Research Director and the fiscal analysts require them to make recommendations to the Legislature.

(b) Except as otherwise provided in this section, NRS 218.2475, 218.2477 and 353.211, disclose to any person outside the Legislative Counsel Bureau the contents or nature of any matter, unless the person entrusting the matter to the Legislative Counsel Bureau so requests or consents.

2. The nature or content of any work previously done by the personnel of the Research Division of the Legislative Counsel Bureau may be disclosed if or to the extent that the disclosure does not reveal the identity of the person who requested it or include any material submitted by the requester which has not been published or publicly

disclosed. The content of the work product of the Legal and Fiscal Analysis Divisions is confidential and not subject to subpoena only if at the time of creation a representation of confidentiality is made.

3. When a statute has been enacted or a resolution adopted, the Legislative Counsel shall upon request disclose to any person the state or other jurisdiction from whose law it appears to have been adopted.

4. The records of the travel expenses of Legislators and officers and employees of the Legislative Counsel Bureau are available for public inspection at such reasonable hours and under such other conditions as the Legislative Commission prescribes.

5. If a Legislator asks whether a request for proposed legislation relating to a specific topic has been submitted to the Legislative Counsel for preparation, the Legislative Counsel shall disclose to that Legislator whether such a request has been submitted.

6. Upon receipt of a request for the preparation of a measure to be submitted to the Legislature which duplicates or closely resembles a request previously submitted for the same Legislative Session, the Legislative Counsel shall, to the extent practicable, notify the Legislator or other requester submitting the duplicative request of that fact and, except as otherwise provided in this subsection, ask the Legislator or other requester to withdraw the request. If the request is not withdrawn, the Legislative Counsel shall inform the previous requester of the fact that a duplicative request has been made. If the request is submitted by a Legislator on his own behalf, and the previous request was submitted by a Legislator who is a member of the other house of the Legislature, the Legislative Counsel shall inform the second requester of the fact that the request is duplicative.

G. RESULTS OF INVESTIGATION:

The genesis of the complaint arises from a campaign mailer during the 2004 election cycle. Daniel Burdish, who filed the complaint, sent out a campaign mailer which alleged Perkins' suppression of the results of a sexual harassment investigation during the 2003 legislative session (see copies of Burdish mailer under Tab D). Assemblyman Perkins responded with a mailer which was provided with the complaint as credible evidence to substantiate allegations of suppressing the 2003 report.

Lorne Malkiewich, Director of the Legislative Counsel Bureau, provided the following information regarding the sexual harassment investigation:

“During the 2003 legislative session there were media reports concerning alleged misconduct by Assemblyman Mark Manendo. Though no complaint was ever filed, the Speaker of the Assembly, Assemblyman Richard Perkins, requested that I conduct an investigation of the alleged incident. When I completed the investigation, I reported back to Speaker Perkins. I treated the communication with the Speaker as confidential, and requested that he treat the report in the same manner. The report is now in my possession alone: after the Speaker reviewed it, he returned it to me.

The statutes concerning the Legislative Counsel Bureau are very specific concerning confidentiality. Subject to very few, and very limited, exceptions, all matters entrusted to our staff are confidential, unless the person entrusting the matter requests or consents to its disclosure (subsection 1 of NRS 218.625). In this instance, some of the people from whom I obtained this information have not consented to its disclosure, and others have specifically requested that it be kept confidential. Under these circumstances, the report is clearly a confidential document.”

The statute Mr. Malkiewich references provides:

“NRS 218.625(1)

1. The Director, other officers and employees of the Legislative Counsel Bureau shall not:

(a) Oppose or urge legislation, except as the duties of the Director, the Legislative Auditor, the Legislative Counsel, the Research Director and the fiscal analysts require them to make recommendations to the Legislature.

(b) Except as otherwise provided in this section, NRS 218.2475, 218.2477 and 353.211, disclose to any person outside the Legislative Counsel Bureau the contents or nature of any matter, unless the person entrusting the matter to the Legislative Counsel Bureau so requests or consents.”

The exceptions provided in subsection 1(b) relate only to bill draft requests and state agency budget information.

The Executive Director concurs that the statutory provisions of NRS 218.625(1) provide confidentiality to the report Director Malkiewich prepared for Assemblyman Perkins. As the report has statutorily conferred confidential status, it would not appear to meet the criteria of a government report or other document set forth in NRS 281.481(6).

However, even proceeding under the assumption that the report was not confidential, there must be credible evidence that Assemblyman Perkins suppressed the report because it might tend to unfavorably affect his pecuniary interests. The complaint provided no credible evidence to support the supposition that Assemblyman Perkins has a pecuniary interest as it relates to the public release of the report. Assemblyman Perkins earns \$7,800 during the biennial legislative session. Additionally, members serving in leadership receive approximately \$900 in additional compensation during the legislative session. Any alleged suppression of documents would neither increase nor decrease the amount Assemblyman Perkins earns. Further, Assemblyman Perkins does not share any familial, business, or financial relationships with Assemblyman Manendo. Therefore, no credible evidence exists to substantiate a pecuniary interest which is necessary to find a violation of NRS 281.481(6).

The complaint was received in the Commission on November 1, 2004, a day before the general election. Since the date the complaint was filed, Assemblyman Perkins was both re-elected to the Assembly and re-elected as its Speaker, so any speculation regarding the

release of the report influencing his re-election to the Assembly or as Speaker is purely that – speculation.

Based on the aforementioned analysis, the Executive Director reaches the following conclusions:

- The report which is the subject of the complaint could not be considered suppressed by Assemblyman Perkins as the report is confidential pursuant to NRS 218.625 and is not a public record;
- Assemblyman Perkins is not the legal custodian of the report; rather, the Legislative Counsel Bureau is the custodian and as such the LCB is bound by the confidentiality provisions of NRS 218.625(1);
- Assemblyman Perkins can not suppress a report over which he is not the custodian of record, therefore he could not have suppressed the report which is the subject of the complaint; and
- Assemblyman Perkins had no pecuniary interest related to neither the suppression of nor the public release of the report.

Accordingly, the Executive Director finds no credible evidence to substantiate the allegations within the complaint, and supports a finding that no just and sufficient cause exists to present the matter to the full Commission.

H. CONCLUSION:

The Executive Director hereby recommends that the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegation that the subject violated NRS 281.481(6), and further that the allegation be dismissed.

DATED: December 22, 2004

Stacy M. Jennings
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR